

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 54 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LTD

Appearance:

MR B.B.Naik for Mr. MANISH R BHATT for Petitioner
Mr.Manish J Shah for MR JP SHAH for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 18/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

Rule was issued in this matter on
17.8.84. Thereafter, it was ordered to be heard with ITR
No.317 of 1983 by an order made on 22.11.84. I.T.R. No.

no.317 of 1983 has been disposed of by us yesterday. That Reference related to question nos. 1 and 5 which are referred to in the present application and in respect of which the Reference was made by the Tribunal. This application was made to seek a direction for making a Reference in respect of three remaining questions, namely the question nos.2,3 and 4 which read as under:

"2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the gratuity paid to the extent of Rs. 16,54,724/- should have been allowed as a deduction ?

3. Whether on the facts and in the circumstances of the case, the decision of the Tribunal in allowing the deduction of gratuity will not amount to double benefit to the assessee ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the investment allowance claimed by the assessee should have been allowed under section 32-A of the Act ?"

2. The question nos. 2 and 3 relate to gratuity actually paid by the assessee. According to the Revenue, the assessee had created a Trust in 1976 for the purpose of contribution to gratuity fund and according to the provisions of section 40A(7), contribution to gratuity fund was allowable as deduction and no other payments could be allowed. The Tribunal rejected this contention by holding that the two amounts in dispute relate to the payment of gratuity within the previous year in respect of the employees who had retired. It was found that the ITO had disallowed the claim in past in respect of these two employees on the ground that the payments of instalments did not relate to these earlier years. Therefore, as a corollary, the claim was to be allowed in the subsequent year on the basis of the actual payment. It is therefore, obvious that there is no question of any double deduction being allowed. Sub-section (7-B) of section 40A as also clause A of section 7 refers to any provision made by the assessee for payment of gratuity. The payments which had become payable and were paid during the relevant previous year in view of the ITO's disallowing the amounts in the earlier previous year, were rightly held to be allowable as business expenditure and no question of law arises as suggested by the Revenue from the decision of the Tribunal in this regard.

3. As regards the question no.4 relating to investment allowance, we find that it is on the basis of the facts found, namely, 90% of the production related to manufacturing of textile that the CIT(Appeals) had allowed the investment allowance of Rs. 25,391/- to the assessee which came to be confirmed by the Tribunal. The finding is based on facts established in his regard raising no question of law.

4. This application is therefore, misconceived. Rule is discharged with no order as to costs.

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